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98-2007

Supreme Court, U.S.
FILED
SEP 7 1999
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

CITY OF NEW YORK, et al.,
PETITIONERS

VS.

RONNIE COVINGTON,
RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent asks leave to file the attached brief and opposition to the Petitioners' Petition For A Writ of Certiorari without prepayment of costs and to proceed in forma pauperis.

[x] Respondent has previosly been granted leave to proceed in forma pauperis in the following courts:

1. United States District Court-Southern District of New York; and

2. United States Court of Appeals for the Second Circuit; and

3. United States District Court-Eastern District of New York.

Respondent's declaration in support of this motion is attached hereto.

Ronnie Covington

32pp

DECLARATION IN SUPPORT OF
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Ronnie Covington, am the respondent in the above-entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

I further swear that the responses I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes___ No_x_

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is ~~xxx~~ no, state the date of your last employment and the amount of salary or wages per month which you received. **1990 $1, 600.00 per month.**

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interests, dividends, or other sources? Yes_x_ No___ **prisoner program assignments.**

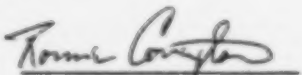
3. Do you own any cash or have a checking or savings account? Yes___ No_x_

4. Do you own any real estate, stocks,bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes___ No_x_

5. List the persons who are dependent upon you for support and state your relationship to those persons. **none.**

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 1999.



Ronnie Covington

98-2007

IN THE

SUPREME COURT OF THE UNITED STATES

CITY OF NEW YORK, et al.,
PETITIONERS

VS.

RONNIE COVINGTON,
RESPONDENT

BRIEF IN OPPOSITION TO THE CITY OF NEW YORK'S PETITION FOR A WRIT OF CERTIORARI

RONNIE COVINGTON
93 A 6800
Respondent, pro-se
Clinton Correctional Facility
P.O. Box 2001
Dannemora, N.Y. 12929

QUESTIONS PRESENTED

1. Whether the judgment of the United States Court of Appeals for the Second Circuit (hereinafter **"Second Circuit"** should be affirmed for the reasons set forth in the Second Circuit's March 18, 1999 Opinion in this case?

2. Whether the United States Courts of Appeals should be allowed to continue remanding cases to the United States District Courts for factual determinations when the record(s) relating to those cases so remanded where certain facts are required to be ascertained so as to enable the district courts and or the United States Courts of Appeals to adequately and correctly decide those cases in accordance with the law?

3. Whether the judgment of the Second Circuit should be affirmed alternatively for, inter alia, the reasons set forth in the Honorable Justice Ginsburg's Concurring Opinion in Albright v. Oliver, 1994, 510 U.S. 266 at 276-280?

4. Whether a defendant in a pending criminal action pending a trial thereon or a probable cause determination thereon by the trial court may challenge the constitutionality or validity of the fact or duration of his pre-trial seizure in a suit for declaratory judgment and or monetary damages under 42 U.S.C. §1983?

5. Whether §1983 claims encompassing injuries for, inter alia, false arrest, false imprisonment, malicious prosecution and conspiracy should be separated into common-law tort catagories?

6. Whether a §1983 suit for compensatory damages attributable to an allegedly unreasonable continuous seizure wherein criminal charges in an underlying criminal action were dismissed and or the criminal court determined that no probable cause existed for the seizure of the Plaintiff and which encompasses and causes the Plaintiff therein, inter alia, the actual, compensable injuries of having been the subject and victim and suffered the effects of a court issued securing order [releasing the Plaintiff on his own recognizance, releasing the Plaintiff on bail and or committing the Plaintiff to the custody of the sheriff] unitl a subsequent court determination of whether probable cause existed for the seizure of the Plaintiff and or until the subsequent disposition of the criminal charges against him caused by the continuous false and deliberately misleading testimony and representations of the tort feasors against Plaintiff during the course of the seizure and the underlying criminal proceeding accrues upon the commencement of the seizure of the Plaintiff, or, upon the termination of the seizure of the Plaintiff and the dismissal of the criminal charges against him?

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STATEMENT OF JURISDICTION

The Second Circuit issued its panel decision on March 18, 1999. In addition, the Second Circuit properly analyzed and applied the jurisprudence of this Court in issuing a decision that is legally correct and consistent with federal law, however, this Court has jurisdiction to review this decision under 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS APPEAL

The 4th and 14th Amendments to the United States Constitution and 42 U.S.C. §1983 are found in Petitioners' Appendix at page #-43-.

STATEMENT OF THE CASE

For the reasons set forth hereinbelow the Petitioners' arguments in support of their Petition are repleat with misstatements of fact and law. (see Rule 15(2) of the Rules of the United States Supreme Court).

The pertinent facts and Respondent's Statement of this Case are already fully set forth in the lengthly **". BACKGROUND"** section of the Second Circuit's subject decision as set forth in the Appendix of the Petition (hereinafter **"Petitioners' Appendix"**) at pages #-A4- through -A8- and thus because Respondent is satisfied with the Petitioners' presentation of those pertinent facts in the Second Circuit's decision at pages #-A4- through -A8- of the Petitioners' Appendix, in accordance with Rule 24.2 of the Rules of the United States Supreme Court these pertinent facts and Respondent's Statement of the Case

need not be rewritten here.

Respondent incorporates here as though set forth herein the pertinent facts as fully set forth in the lengthly **"I. BACKGROUND"** section of the Second Circuit's subject decision as set forth in Petitioners' Appendix at pages #-A4- through -A8-.

The Second Circuit declined to reinstate the remaining two (2) issues raised in Respondent's Brief For Plaintiff-Appellant namely (1) Respondent's complaint did not adequately allege conspiracy claims, and (2) the district court did not err in converting the Petitioners' motion to dismiss into a motion for summary judgment without notifying Respondent of its intentions to do so and afford Respondent an opportunity to submit additional information (in that after the district court dismissed Respondent's complaint Respondent then filed a motion to vacate and or amend the judgment pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure).

Although the district court dismissed those portions of Respondent's §1983 claims encompassing conspiracy and malicious prosecution in 1995, Respondent is now in the process of preparing a motion to amend the complaint and a proposed Second Amended Complaint to amend, inter alia, those deficiencies as the Second Circuit in Murphy v. Lynn, 1997, 118 F. 3d 938 cert. den. ___U.S.___, 118 S Ct. 1051 subsequently held that "a dismissal of criminal charges due to a violation of New York Speedy Trial principles (N.Y.C.P.L. §30.30) was termination in

favor of arrestee".

Respondent also incorporates here as though set forth herein the remainder of the Second Circuit's subject decision as set forth in Petitioners' Appendix at pages #-A8- through -A15-.

On June 15, 1999 the Petitioners filed their Petition with this honorable Court.

On July 27, 1999 this honorable Court granted Respondent an extension of time to September 1, 1999 to file this Brief and Opposition to the Petition.

ARGUMENT

I. THE JUDGMENT OF THE SECOND CIRCUIT SHOULD BE AFFIRMED FOR THE REASONS SET FORTH IN THE SECOND CIRCUIT'S MARCH 18, 1999 OPINION IN THIS CASE!

Plaintiff-Respondent incorporates here as though set forth herein, the Second Circuit's March 18, 1999 Opinion (171 F. 3d at pages #117 through 124).

For the reasons set forth in the Second Circuit's March 18, 1999 Opinion (171 F. 3d at pages #117 through 124) the judgment of the Second Circuit which vacated the judgment of the district court should be affirmed.

II. THE SECOND CIRCUIT CORRECTLY REMANDED THIS CASE TO THE DISTRICT COURT (AFTER VACATING THE JUDGMENT OF THE DISTRICT COURT) FOR FURTHER PROCEEDINGS CONSISTENT WITH THE SECOND CIRCUIT'S MARCH 18, 1999 OPINION WHERE THE SECOND CIRCUIT WAS UNABLE TO DETERMINE FROM THE CURRENT RECORD WHETHER A JUDGMENT IN RESPONDENT'S FAVOR WOULD HAVE UNDERMINED THE VALIDITY OF ANY POTENTIAL CONVICTION IN THE UNDERLYING CRIMINAL PROCEEDINGS AGAINST HIM

As this honorable Court is undoubtedly aware, Corporation Counsel of the City of New York (hereinafter "Corporation

Counsel") is counsel for the Petitioner "City of New York" and all of its officers and employees.

Corporation Counsel's reasoning that "the Second Circuit majority's conclusion that to decide the issue of the date of accrual of a false arrest claim, a Didstrict Court hearing must be held, 9 years after Plaintiff's subject arrest and prosecution, which would essentially require a full trial not only of Plaintiff's false arrest claim but also of criminal charges, that were dismissed eight years ago on speedy trial grounds, departs from the usually applicable rules of accrual, conflicts with decisions of other circuits and is practically infeasible ..." intentionally misconstrues the Second Circuit's opinion for several reasons:

Firstly, it would be an affectation of legal research to cite a plethora of cases and the many treatises on the law to confirm that the United States Courts of Appeals are empowered to remand cases to the district courts for factual determinations when the record(s) relating to those cases so remanded require further development and that additional facts be ascertained or clarified so as to enable the district courts and or the courts of appeals to adequately and correctly decide those cases in accordance with the law.

Secondly, the Second Circuit did not order that a mere hearing be held on an eight to nine year old case or issue, the Second Circuit specifically "remand[ed] ... for further proceedings consistent with this [March 18, 1999] opinion.".

Thus, the district court is not limited to simply holding a hearing, the district court may also use, if necessary, several other different options provided by the Federal Rules of Civil Procedure. For instance, (1) the district court may send advance notice to the parties that a hearing will be held on the specific issue and direct the parties to submit written briefs to the court in advance of the hearing, or (2) the district court may decide not to hold a hearing on the issue but instead may direct the parties to submit written briefs, motions to dismiss and or summary judgment motions, or (3) the district court may direct discovery (or additional discovery) of court, police and prosecutorial agency records to be had and produced to the court to aid in the court's determination, or (4) the disctrict court may direct that depositions, interrogatories, affidavits, admissions, stipulations, etc. be had on the issues and produced to the court to aid the court in its determination [NOTE: **In future cases, the parties and or their counsel will already know in light of the Second Circuit's March 18, 1999 decision to obtain any court, police and prosecutorial agency(s) records, and affidavits, depositions, interrogatories, admissions and or stipulations, etc. relating to the issues of inevitable discovery, independent source and or harmless error prior to submitting motions to dismiss or summary judgment motions**].

Thirdly, the underlying criminal action was not a case that was immediately dismissed, it was prosecuted by the Petitioners for 478 days (15 calendar months) the same amount of time of

Respondent's continuous seizure from February 18, 1990 through June 10, 1991 where in accordance with New York law the criminal case was required to be tried within six calendar months (N.Y.C.P.L. §30.30). Additionally, under New York law, to wit, N.Y.C.P.L. §160.50"(1) Upon the termination of a criminal action or proceeding against a person in favor of such person,... the record of such action or proceeding shall be sealed and the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcemnt agencies that the action has been terminated in favor of the accused, and unless the court has directed otherwise, that the record of such action or proceeding shall be sealed. Upon receipt of notification of such termination and sealing: ...(c) all official records and papers, including judgments and orders of a court ... relating to the arrest or prosecution, including all duplicates and copies thereof, on file with **the** division of criminal justice services, any court, police agency or prosecutor's office shall be sealed and not made available to any person or public or private agency; (d) such records shall be made available to the person accused or to such person's designated agent ...".

It is apparent from Corporation Counsel's submission of copies of the state court docket (i.e., casefile folder jacket) to the district court (see Petitioners' Appendix at page #-A32-) that Corporation Counsel and Petitioners are already in possession

of the state court's file relating to the underlying criminal action, including, inter alia, police memo books, police reports and vouchers and Orders of the state court. Additionally and moreover, none of the personal property that was taken from Respondent by the Petitioners at the time of REspondent's arrest (i.e., approximately $400.00 United States currency, Respondnet's car keys, Respondnet's apartment keys and Respondent's wallet containing Respondent's identification) was confiscated as arrest evidence, and that all of Respondent's said personal property was returned to REspondent by Petitioners Santucci, "K-Doe" and New York City Police Department prior to the termination of the underlying criminal action. Respondent notes that Corporation Counsel's statement that "In the case of a claim of false arrest, or an arrest without probable cause, all relevant facts are known to or may be discovered by the ... arrestor, at the time of the arrest." (see Petition at page #14) renders their arguments that the Second Circuit's decision "is practically infeasible" all the more frivolous for obvious reasons. In fact, a classic example of just how easily workable and feasible the Second Circuit's March 18, 1999 opinion is exists in Covington v. City of New York, et al., 94 Civ. 4234 (WHP) [previously (SAS)] (which is the same case cited by Corporation Counsel in the Petition at page #5, n.1) and a case in which none other than Corporation Counsel was counsel for the Petitioner City of New York and its officers and employees and in which Respondent is the Plaintiff. In that case, the district court had previously ruled that Respondent's §1983

claims encompassing false arrest, false imprisonment were time-barred. (see Covington v. City of New York, et al., 1996, 916 F. Supp. 282 at 285-286 (S.D.N.Y.). However, prior to trial in that case, the Second Circuit issued its March 18, 1999 Opinion, whereupon Respondent's counsel in that case by letter-motion to the district court dated April 8, 1999 moved to reinstate Respondent's previously dismissed §1983 claims encompassing false arrest and false imprisonment on the grounds that "the only evidence for conviction was obtained pursuant to an arrest" quoting the Second Circuit's opinion 1999 U.S. App. LEXIS 4365 at *16; 171 F. 3d at123 (see Respondent's Appendix at page #1). Whereupon, Corporation Counsel, by letter to the district court dated April 16, 1999 stated "I write to inform the Court that defendant will not oppose plaintiff's request for reinstatement of his false arrest claim against Detective Kid." (see Respondent's Appendix at page #2). On April 21, 1999 a Stipulation Of Reinstatement Of Claim stipulating and agreeing between the parties to the reinstatement of Respondent's false arrest claims which was also signed by the Court and entered into the record (see Respondent's Appendix at page #3). Thus, the Second Circuit's remand of this case to the district court for further proceedings consistent with its March 18, 1999 Opinion cannot be said to be "infeasible".

Fourthly, the Second Circuit's remand of this case to the district court for further proceedings consistent with its March 18, 1999 Opinion does not, as Petitioners' aver, "depart

from the usually applicable rules of accrual" because in the Second Circuit the rules of accrual are flexible, to wit, "**Generally speaking**, under federal law, the time of accrual [is] that point in time when the Plaintiff knows or has reason to know of the injury which is the basis of his action." (Covington, 171 F. 3d at 121; Petitioners' Appendix at page #-A8-). The Second Circuit went on to quote at least one exception to this general rule, to wit, "... in the case of **some** actions brought under §1983, **this general rule** is subject to the Supreme Court's analysis in Heck. ...". Some other exceptions to this **general rule** are equitable estoppel, judicial estoppel, continuing violation' theory, etc. Petitioners, in support of their argument and reasoning for an absolute date of accrual for all §1983 claims encompassing injuries for false arrest, false imprisonment and unreasonable seizures aver that "In the case of a claim of false arrest or an arrest without probable cause, all relevant facts are known to or may be discovered by the arrestee, as well as the arrestor, at the time of the arrest." (Petition at page -14-). This same reasoning of Petitioners would also appear to apply to Plaintiffs in §1983 malicious prosecution actions (whose conviction(s) has been overturned) because such a malicious prosecution Plaintiff also would know that he had been wronged by a malicious prosecution between the time of his arrest and his subsequent conviction, however, as this honorable Court stated in Heck that Plaintiff's §1983 cause of action seeking damages for malicious prosecution does not

accrue until after his conviction has been invalidated and the §1983 action seeking damages in relation to that malicious prosecution cannot be commenced (or stayed) prior to the conviction being invalidated Heck at 489-490.

III. THE JUDGMENT OF THE SECOND CIRCUIT SHOULD BE AFFIRMED ALTERNATIVELY FOR, INTER ALIA, THE REASONS SET FORTH IN THAT PORTION OF THE HONORABLE JUSTICE GINSBURG'S CONCURRING OPINION IN ALBRIGHT V. OLIVER, 1994, 510 U.S. 266 AT 276-280!

That the Petitioners, within their Appellees' Brief before the Second Circuit and in the Petition and within their motions to dismiss fragmentated Respondent's complaint into separate common law tort causes of action, to wit, and inter alia, false arrest, false imprisonment, malicious prosecution and conspiracy so as to persuade the district court, the Second Circuit and this Court to dismiss all or part of Respondent's complaint as time-barred.

The district court and the Second Circuit fragmentated Respondent's complaint into separate common law tort catagories.

Nowhere within the complaint does Respondent allege "AS AND FOR A FIRST CAUSE OF ACTION - FALSE ARREST", AS AND FOR A SECOND CAUSE OF ACTION - FALSE IMPRISONMENT", AS AND FOR A THIRD CAUSE OF ACTION - MALICIOUS PROSECUTION" OR AS AND FOR A FOURTH CAUSE OF ACTION - CONSPIRACY".

The Amended Complaint specifically sets forth the rights which Petitioners initially deprived Respondent, including his 4th Amendment rights to privacy from unlawful searches, and seizures, his 5th Amendment rights to privacy from the

deprivation of liberty without due process of law, his 8th Amendment rights to privacy from cruel, and unusual punishments, and his 14th Amendment rights to privacy from the deprivation of liberty without due process of law, to privacy from the abridgement of the priveleges or immunities granted to him as a citizen of the United States and to Equal Protection of the Laws, which started with the initial unlawful seizure and false arrest of Respondent.

The Amended Complaint also sets forth such additional rights as the Petitioners conspired to deprive and, deprived Respondent and/or permitted or acquiesced in while they continued to conspire to deprive and deprived him, including when the Petitioners Guillois, "D-Doe", "Four Other Police Officers", "C-Doe", "B-Doe" and "-Doe" (1) took, or caused to be taken, Respondent's fingerprints [New York C.P.L. §160.10(1)(a)], photographs and palmprints [N.Y.C.P.L. §160.10(3)], (2) forwarded two copies of Respondent's fingerprints to the New York State Division of Criminal Justice SErvices, (3) gave the said Division of Criminal Justice Services report relating to Respondent (as defined in N.Y.C.P.L. §160.30) to Petitioners Santucci and "K-Doe" and gave two copies thereof to the Criminal Court of the City of New York and (4) brought Respondent, or caused Respondent to be brought, before said Criminal Court of the City of New York and fraudulently filed therewith a libelous felony complaint (as described in N.Y.C.P.L. §1.20[8]) charging Respondent with the crimes as set forth in the Amended Complaint and caused Respondent to be arraigned

thereon in said Criminal Court of the City of New York [N.Y.C.P.L. §140.20(1)] and continuously conspired to deprive, and deprived, Respondent of his said rights until said criminal action, to wit, Docket #90Q006636, was dismissed on June 10, 1991 [see Albright v. Oliver, 1994, 510 U.S. 266, 274; Albright v. Oliver, - Honorable Justice Ginsburg's Concurring Opinion, 510 U.S. at 276-280; Albright v. Oliver, - Honorable Justice Souter's Concurring Opinion, 114 S Ct. 820-822; and Albright v. Oliver, - Justices Stevens's and Blackmun's dissenting Opinion, 114 S Ct. 824-831].

In Albright v. Oliver, supra, a warrant was issued for Plaintiff Albright's arrest by Illinois authorities, and upon learning of it he surrendered and was released on bail, the prosecution was subsequently dismissed on the ground that the charge did not state an offense under Illinois law. Albright then instituted a civil rights action pursuant to 42 U.S.C. §1983 against defendant Oliver alleging therein that Oliver deprived him of substantive due process under the 14th Amendment - his "liberty interest" to be free from criminal prosecution except upon probable cause. The district court dismissed Albright's complaint for failure to state a claim. The Court of Appeals for the Seventh Circuit affirmed the district court's dismissal of the complaint [975 F. 2d 343 (1992)] and held that prosecution without probable cause is a constitutional tort actionable under §1983 only if accompanied by incarceration or loss of employment or some other "palpable consequence" [975 F. 2d 346-47].

This honorable Court subsequently affirmed 510 U.S. 266 (1994) albeit on different grounds. This Court stated "that it is the Fourth Amendment, and not substantive due process, under which Petitioner Albright's claims must be judged." Id at 271. This Court stated that Albright did "not claim Illinois denied him the procedural due process guaranteed by the 14th Amendment. Nor did he claim a violation of his Fourth Amendment rights, notwithstanding the fact that his surrender to the State's show of authority constituted a seizure for purposes of the Fourth Amendment." Id at 271. This Court then reinstated the well established law that "Where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of governmental behavior, that Amendment, not the more generalized notion of substantive due process must be the guide for analyzing these claims" (citations omitted) and further ruled that "We think this principle is likewise applicable here. The Framers considered the matter of pre-trial deprivations of liberty, and drafted the Fourth Amendment to address it..." (Id at 274) and "...the Fourth Amendment's relevance to the deprivations of liberty that go hand in hand with criminal prosecutions." Id at 274.

Although the Court's plurality opinion "expressed no view as to whether Plaintiff [Albright's] claim would succeed under the Fourth Amendment, since he [did] not present that question in his petition for certiorari." (Id at 275), the Honorable Justice Ginsburg addressed the possible merits of Albright's

claim in her Concurring Opinion (Id at 276-281).

Respondent incorporates here as though set forth herein that portion of the Honorable Justice Ginsburg's Concurring Opinion in Albright v. Oliver, 1994, 510 U.S. 266 reported at pages 276 through 280 (excluding the last sentence thereof on page #280 which states "It was, however, a claim Albright abandoned in the District Court and did not attempt to reassert in this Court.").

The Honorable Justices Stevens and Blackmun in Part VI of their dissenting Opinion agreed with the Honorable Justice Ginsburg's reasoning stating:

> "A separate comment on Justice Ginsburg's opinion is appropriate. I agree with her explanation of why the initial seizure of petitioner continued until his discharge and why the seizure was constitutionally unreasonable. Had it been conducted by a federal officer, it would have violated the Fourth Amendment. And, because unreasonable official seizures by state officers are deprivations of liberty or property without due process of law, the seizure of petitioner violated the 14th Amendment. Accordingly Justice GINSBURG is correct in concluding that the complaint sufficiently alleges a cause of action under 42 U.S.C. §1983...

Id at 307

> ...I agree with Justice GINSBURG that the officer's incomplete testimony at the preliminary hearing perpetuated the violation of petitioner's right to be free from unreasonable seizure, ante at 315..."

Id at 308, n.26.

It would also appear that the Honorable Justice Souter in his Concurring Opinion agrees with the Honorable Justice Ginsburg's

Fourth Amendment reasoning (114 S Ct. at 820-821).

The Honorable Justice Ginsburg's previously stated Concurring Opinion/reasoning in Albright, supra is further supported by this honorable Court's subsequent plurality opinion in Heck and the concurring opinions therein of the Honorable Justices Souter, Blackmun, Stevens and O'Connor at 512 U.S. at 498-500.

In Heck, Plaintiff Roy Heck was convicted for killing his wife. While his conviction was pending, Heck, proceeding pro se, filed a civil rights action in Federal District Court under 42 U.S.C. §1983. His complaint alleged that defendants, acting under color of state law, had engaged in an "unlawful, unreasonable, and arbitrary investigation" leading to Plaintiff's arrest; "knowingly destroyed" evidence "which was exculpatory in nature and could have proved [his] innocence; and caused "an illegal and unlawful voice identification procedure" to be used at Heck's trial. The district court dismissed Heck's action without prejudice, because the issues it raised "directly implicated the legality of Heck's confinement". When the Seventh Circuit Court of Appeals reached Heck's appeal from dismissal of his §1983 complaint, it affirmed the judgment and approved the reasoning of the district court: "If, regardless of the relief sought, the Plaintiff in a federal civil rights action is challenging the legality of his conviction, so that if he won his case the state would be obliged to release him even if he hadn't sought that relief, the suit is classified as an application for habeas corpus and the

Plaintiff must exhaust his state remedies, on pain of dismissal if he fails to do so" 997 F. 2d 355, 357 (1993).

That a fortiori then that Respondent's 4th, 5th, 8th and 14th Amendment claims necessarily imply that his subject seizure, custody, confinement and imprisonment were unlawful, and thus because "[u]nder New York law, the elements of a false imprisonment are: '(1) the defendant intended to confine the Plaintiff, (2) the Plaintiff was conscious of the confinement, (3) the Plaintiff did not consent to the confinement, and (4) the confinement was not otherwise privileged' Broughton v. State of New York, 1975, 37 N.Y. 2d 451; see also Hygh v. Jacobs, 961 F. 2d 359, 366 [2nd Cir.] ("the elements of a claim of false arrest under §1983 are substantially the same as the elements of a false arrest under New York law")" Singer v. Fulton County Sheriff, 1995, 63 F. 3d 110, 118 [2nd Cir.]; Smith v. County of Nassau, 1974, 34 N.Y. 2d 18 ("Under New York law the common law tort of false arrest is a species of false imprisonment and both require a lack of probable cause for arrest"), under Preiser v. Rodriguez, 1973, 411 U.S. 475, Albright, supra, Heck, supra, Woods v. Candela, 47 F. 3d 546, Broughton, supra, Singer, supra, and Ostrover v. City of New York, 1993, 192 A.D. 2d 115 (1st Dept.), Respondent would not have been able to prove the fourth element of his §1983 claims encompassing False arrest and false imprisonment and malicious prosecution, i.e., that "the confinement was not otherwise privileged" until June 10, 1991 when Petitioners abandoned their unlawful seizure of Respondent

and the New York State Court dismissed the Petitioners' criminal prosecution of Respondent on the Motion of the Petitioners, and pursuant to N.Y.C.P.L. §30.30 for violation of the New York Speedy Trial statutes (see pages #1 and 2 of the said casefile folder jacket relating to the underlying criminal action that was submitted to the district court by Petitioners; see also Albright v. Oliver, at 276-280 [Ginsburg, J. concurring-concluding that "a criminal defendant released pretrial is... still 'seized' in the constitutionally relevant sense" and remains "effectively 'seized' for trial so long as the prosecution against him remain[s] pending"]; Albright at 307, and 308, n.26 [Stevens and Blackmun, JJ., dissenting-"... agree[ing] with J. Ginsburg that the officer's incomplete testimony at the preliminary hearing perpetuated the violation of Plaintiff's right to be free from unreasonable seizure, ante at 815']; Singer v. Fulton County Sheriff, 63 F. 3d at 115, n.4 and 117,n.6; Woods v. Candela, 1995, 47 F. 3d 545 [2nd Cir.]).

Thus, in view of the foregoing it is clear that the district court erred in carving up Respondnet's §1983 claim into common-law tort catagories and dismissing portions of Respondent's §1983 claim as time-barred.

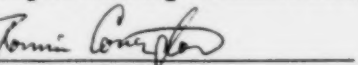
CONCLUSION

For the foregoing reasons, the judgment of the Second Circuit should be affirmed.

DATED: August 25, 1999
Dannemora, New York

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.
Executed on August 25, 1999.

Respectfully Submitted,



Ronnie Covington
93 A 6800
Respondent, pro-se
Clinton Correctional Facility
P.O. Box 2001
Dannemora, N.Y. 12929

RESPONDENT'S
APPENDIX

BEST AVAILABLE COPY

John E. Daly
Attorney at Law

Direct Dial 212.969.3419
jdaly@proskauer.com

April 8, 1999

BY HAND

The Honorable William H. Pauley III
United States District Court
Southern District of New York
40 Centre Street, Room 234
New York, New York 10007

e: Covington v. City of New York (94 Civ. 2434)

ar Judge Pauley:

represent plaintiff Ronnie Covington in the above-referenced action, and write to call the rt's attention to a recent Second Circuit decision that demonstrates that this Court's earlier issal of plaintiff's claims of false arrest and false imprisonment on statute of limitations nds. We thus request that the Court reconsider its dismissal of the false arrest and false sonment claims against defendant Police Officer Thomas Kid in light of this new precedent.

new decision, *Covington v. City of New York*, No. 96 Civ. 2026, 1999 U.S. App. LEXIS 2d Cir. Mar. 18, 1999) (copy attached at Exh. 1), the Second Circuit Court of Appeals d the dismissal of false arrest claims brought by plaintiff Ronnie Covington (in an action ed to the instant lawsuit). In that case, the district court dismissed Mr. Covington's claims ely because they were filed more than three years after the date the arrest took place. g the district court, the Second Circuit held that the false arrest claims may have not on the date of the false arrest, but instead on the date the related criminal gs terminated. The Court held that the claims would accrue on the date the criminal gs terminated "[i]f a favorable determination on the false arrest claim would in fact rmined the validity of any potential conviction against Covington resulting from the al proceedings . . . ." *Id.* at *3. The Court explained that "in a case where the only r conviction was obtained pursuant to an arrest, recovery in a civil case based on false

Office of the Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

Fax Transmission

To:	John E. Daly Elizabeth I. Hook	**From:**	Orrit Hershkovitz
Company:		**Date:**	April 16, 1999
Fax #:	(212) 969-2900		

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RESPONDENT'S APPENDIX - Page #2

Gen. Lit.

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL D. HESS
Corporation Counsel

ROOM 2-112
TEL.: (212) 788-0889

April 16, 1999

BY HAND

Honorable William H. Pauley III
United States District Judge
Southern District of New York
40 Centre Street, Room 234
New York, NY 10007

Re: Covington v. Kid, 94 Civ. 4234 (WHP)

Dear Judge Pauley:

I write to inform the Court that defendant will not oppose plaintiff's request for reinstatement of his false arrest claim against Detective Kid.

Respectfully submitted,

Orrit Hershkovitz
Assistant Corporation Counsel

cc: John E. Daly (by fax)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RONNIE COVINGTON,

Plaintiff,

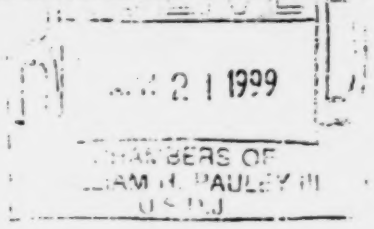
v.

POLICE OFFICER THOMAS KID,

Defendant.

94 Civ. 4234 (WHP)

STIPULATION OF REINSTATEMENT OF CLAIM



IT IS HEREBY STIPULATED AND AGREED by the undersigned attorneys for the parties to this action, as follows:

Plaintiff's claim of false arrest against Police Officer Thomas Kid, as set forth in the Second Amended Complaint, is hereby reinstated on the consent of both parties.

Dated: April 21, 1999
New York, New York

PROSKAUER ROSE LLP

By: _____
John Daly (JD 2777)
Elizabeth I. Hook (EH 2496)
1585 Broadway
New York, New York 10036
(212) 969-3419
Attorneys for Plaintiff Ronnie Covington

THE CITY OF NEW YORK,
LAW DEPARTMENT

By: _____
Orrit Hershkovitz, Esq.
Assistant Corporation Counsel
100 Church Street
New York, New York 10007
(212) 788-0889
Attorneys for Defendant Thomas Kid

SO ORDERED:

_____
United States District Judge

98-2007

IN THE

SUPREME COURT OF THE UNITED STATES

CITY OF NEW YORK, et al.,
PETITIONERS

VS.

RONNIE COVINGTON,
RESPONDENT

PROOF OF SERVICE

I, RONNIE COVINGTON, do swear or declare that on this date, August 25, 1999, as required by Supreme Court Rule 29 I have served the enclosed Motion For Leave To Proceed In Forma Pauperis and Brief In Opposition To The City Of New York's Petition For A Writ Of Certiorari on Petitioners' counsel by submitting an envelope containing the above documents to prison officials along with prison disbursement forms and Authorized Advance Forms properly addressed to Petitioners' counsel for authorization for proper postage, delivery and mailing, via First Class Mail.

The name and address of Counsel served is as follows:

Michael D. Hess,
Corporation Counsel of the City of New York
Department of Law
100 Church Street
New York, N.Y. 10007

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 1999.

Ronnie Covington
93 A 6800
Respondent, pro-se
Clinton Correctional Facility
P.O. Box 2001
Dannemora, N.Y. 12929

Clinton Correctional Facility
P.O. Box 2001
Dannemora, N.Y. 12929

August 25, 1999

Hon. William K. Suter,
Court Clerk
Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

RE: City of New York, et al., versus
Covington--No. 98-2007

Dear Clerk:

I am the Respondent, pro-se, in the above referenced case and as such am fully familiar with the facts and circumstances therein.

I have enclosed herein my Respondent's Brief and Opposition to the Petitioners' Petition For A Writ of Certiorari, my In Forma Pauperis application, and my Declaration of Service upon the Petitioners' counsel, one original copy each enclosed in accordance with Rule 15(3) of the Rules of the United States Supreme Court.

In any event, please deliver same to the Justices of this honorable Court, for their consideration thereon.

Your cooperation in this matter will be most gratefully appreciated!

Respectfully Submitted,

Ronnie Covington
93 A 6800

Enclosures

cc: Michael D. Hess,
Counsel for Petitioners

Files

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